Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1078

WARREN J. MOITY,
Petitioner

versus

STATE OF LOUISIANA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA STATE SUPREME COURT

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MOTION AND ORDER FOR STAY OF EXECUTION OF SENTENCE

To The Honorables, The Chief Justice and Associate Justices of The Supreme Court of The United States:

On motion of Warren J. Moity, petitioner, in the above numbered cause and upon suggesting to this Honorable Court, that he has been sentenced to a jail term and to pay a fine, which sentence is sought to be overturned herein, and that there is no provision of Louisiana Law to stay execution of that sentence pending a determination of this application, that a stay be granted your petitioner, of the execution of the sentence imposed herein until this matter is finally disposed of:

It is ordered that the sentence imposed against petitioner in *State of Louisiana vs. Warren J. Moity*, Fifteenth Judicial District Court, No. 30,037, Parish of Acadia, State of Louisiana is hereby stayed until this matter is finally decided.

Washington, D.C., this ..... day of ....., 1972.

.....
JUSTICE

.....

W. D. ATKINS, JR.
305 West Main Street
Lafayette, Louisiana 70501
Attorney for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

WARREN J. MOITY,
Petitioner

versus

STATE OF LOUISIANA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA STATE SUPREME COURT

Wilbur D. Atkins, Jr. on behalf of petitioner prays that a writ of certiorari issue to review the judgment of the Louisiana State Supreme Court entered in the above case on December 21, 1971.

OPINIONS BELOW

No official or unofficial opinion was delivered by any of the Courts below.

JURISDICTION

The Judgments of the Louisiana State Supreme Court were made and entered on December 21, 1971 and copies thereof are appended to this petition, as Appendix A.

This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under Rule 19(1)(a) of this Court; 28 U.S.C.A. 1257(3); *Rosenbloom v. Metromedia, Inc.*, 91 S. Ct. 1811, 1825, "Clearly, then, this Court has an 'obligation' to test challenged judgments against the guarantees of the First and Fourteenth Amendment,' and in doing so 'this Court cannot avoid making an independent constitutional judgment on the facts of the case.' The simply fact is that First Amendment questions of 'constitutional fact' compel this Court's *de novo* review."

QUESTION PRESENTED

Whether, consistently with the guarantee of freedom of speech in the First Amendment as embodied in the Fourteenth, a State may hold criminally libelous *per se*, upon complaint of the brother of the winning candidate for Governor of Louisiana, without clear and convincing proof of actual malice, *i.e.*, knowledge of the falsity of the statement on the part of defendant, statements critical of his conduct, character and background which are inaccurate in some particulars.

CONSTITUTIONAL PROVISIONS

CONSTITUTION OF THE UNITED STATES, AMENDMENT I:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

CONSTITUTION OF THE UNITED STATES, AMENDMENT XIV, SEC. 1:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . ."

LOUISIANA STATUTES ANNOTATED, REVISED STATUTES 14, SECTION 47, AMDT. ACTS 1968, NO. 647, SEC. 1:

> "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:
>
> (1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or
>
> * * * * *
>
> (3) To injure any person, corporation, or association of persons in his or their business or occupation.
>
> Whoever commits the crime of defamation shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

STATEMENT OF FACTS

The petitioner, Warren J. Moity, was a duly qualified candidate for Governor of the State of Louisiana, running in the Democratic First Primary election against Edwin W. Edwards (now Governor-Elect) and others.

During the campaign, and several months before the November 6, 1971 primary election, Moity purchased time on WAFB T.V., Channel 9, in Baton Rouge, Louisiana to promote and advertise his candidacy for the office he sought.

The Alleged Defamation

In that broadcast Moity made the allegation that Marion D. Edwards, brother of Gubernatorial Candidate Edwin W. Edwards was a "back-sliding" Nazarine Preach-

er who had been confined to a mental institution in Nacagdoches, Texas.

The Legal Proceedings

Soon after the broadcast, Moity was charged, upon complaint of Marion D. Edwards, by Bill of Information, with criminal defamation under the provisions of *L.S.A.-R.S. 14:47.*

Trial was held without a jury in Crowley, Acadia Parish, Louisiana (hometown of both Edwin and Marion Edwards). Moity was found guilty and was sentenced to serve ninety-five days in the Parish Jail, and pay a fine of Two Hundred and Fifty Dollars.

The sentence was not appealable, or within the appellate jurisdiction of the Supreme Court of Louisiana. Certiorari was petitioned for and denied by that Court.

The Evidence on Trial

Moity took the witness stand in his defense, and his uncontradicted testimony established that:

A. "Dick" Davis, former employee of Edwin W. Edwards and Dave Ledford, a longtime friend of Edwin and Marion Edwards provided him with the information broadcast about Marion D. Edwards. Tr. 12, 13, 44, 45, 51.

B. Marion D. Edwards and Dave Ledford consulted with Moity prior to the broadcast. Moity testified that Marion told him to use the information, since it would probably help Edwin's campaign more than hurt it. Marion conceded in his testimony that he may have made such a statement. Tr. 11.

C. Marion D. Edwards testified further that he was in the insurance and real estate business in Crowley, Louisiana and took no other part in Edwin Edward's campaign than to make an initial contribution with another brother and to advance Edwin's candidacy by telephone conversations with potential supporters from time to time. He testified that he was never in a mental hospital, but had been a Nazarine Preacher terminating that career ten years before; and that he did have a heart condition, requiring hospitalization at that time. Tr. 11, 12, 13, 44, 45, 46, 47, 48, 53, 56.

D. Moity stated in the broadcast in question that he would pay for television time for Edwin or Marion Edwards to deny these statements if not true, and offered a retraction and apology in Open Court should the statements be untrue. This offer was not accepted. Tr. 48. No testimony showed any harm to Marion Edwards as a result of the broadcasts. Tr. 15, 18, 19.

E. In finding Moity guilty, the Court verbally announced that the discussion of Marion Edward's physical condition was not a proper subject, and that Moity's failure to cause his sources to testify to the truth of the statements presumed his guilt *per se*.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with the freedom of speech principles enunciated in this Court's *Rosenbloom* ruling.

In *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971), this Court held that a liable action "by a private individual against a licensed

radio station for a defamatory falsehood in a newscast relating to his involvement in an event of public or general concern may be sustained only upon clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard or whether it was false or not." *Ibid.*, at 52, 91 S. Ct. at 1824.

Rosenbloom follows *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2nd 686 (1964), and *Garrison v. Louisiana*, 379 U.S. 64, 85 S. Ct. 209, 13 L. Ed. 2nd 125 (1964). This Court held in *Garrison* that the New York Times Standard governed the measure of constitutional restriction upon State power to impose criminal sanctions for criticism; and it follows, *a priori*, to Rosenbloom.

The *New York Times* case held that in a civil libel action by a "public official" against a newspaper, those guarantees require clear and convincing proof that a defamatory falsehood alleged as libel was uttered with "knowledge that it was false or with reckless disregard of whether it was false or not". The case states that the same requirement was held to apply to "public figures" who sued in libel on the basis of alleged defamatory falsehoods. Common to all of these cases was a defamatory falsehood in the reporting of an event of "public or general interest."

The *Moity* case presents the question whether the *New York Times* knowing or reckless falsity standard applies in a state criminal action brought, not necessarily by a "public official" or a "public figure", but by a private individual for a defamatory falsehood uttered in a television broadcast by a candidate for Governor in the State

of Louisiana during a campaign for Governor, about the individuals mental condition, where that individual was the brother of a candidate for Governor and whether Rosenbloom also applies to criminal prosecutions.

Your petitioner herein would like to point out to the Court that in *Rosenbloom*, the person allegedly defamed there apparently made no request for a retraction or correction, and none was forthcoming. See *Rosenbloom*, 81 S. Ct. at 1816. However, in this matter, Moity offered on television in his program on numerous occasions to provide and purchase the time for which and in which Edwin or Marion Edwards could refute the charges and in open court offer to make a public apology if the statements that he made were incorrect. Tr. 45, 48.

In the *Rosenbloom* case the person defamed there was characterized as a "smut distributor" and "girly book peddler" and was otherwise chastised. The news director of the company sued stated that his primary source of information for the series of broadcasts concerning the person defamed was a captain on the police force but that the station had no other verification. In the *Moity* matter, quite to the contrary, petitioner testified that he received his information from Dave Ledford and Dick Davis, Ledford being a long time personal friend and associate of Edwin and Marion Edwards, and Dick Davis being a former employee on Congressman Edwin Edwards' staff, and that he certainly had reason to believe the reliability of the individuals statements. Tr. 12, 13, 44-48, 53, 56.

Petitioner respectfully submits that in the vigorous campaign for Governor of Louisiana, the physical and mental condition of the candidate, as well as that of his brother, who would be subject to be consulted during and

after the campaign, who was certainly a part of the campaign, advising and counseling with Edwin Edwards, contributing funds to his campaign, soliciting votes on his behalf, was an issue of public interest, and constituted him a public figure, made the subject newsworthy, of public interest, and politically, a proper subject of speech and press. Tr. 9, 10, 11, 12, 17, 20.

The Constitutional guarantees for freedom of speech and press impose limits upon Louisiana's power to apply its criminal defamation laws to convict defendant Moity for the alleged defamatory falsehood broadcast about Marion D. Edwards. The commitment of the country to the institution of private property, protected by the Due Process and Just Compensation Clauses in the Constitution, places in private hands vast areas of economic and social power that vitally affect the nature and quality of life in the Nation. Our efforts to live and work together in a free society not completely dominated by government regulations necessarily encompass far more than politics in a narrow sense. "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Thornhill vs. Alabama*, 310 U.S. 88, at 102, 60 S. Ct. 733, 744, 84 L. Ed. 1093 (1941). "In many situations, policy determinations which traditionally were channeled through formal political institutions are now originated and implemented through a complex array of boards, committees, commissions, corporations, and associations, some only loosely connected with the government. This blending of positions and power have also occurred in the case of individuals so that many who do not hold public office at the moment are never the less

intimately involved in the resolution of important public questions . . .

". . . Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as in the case of 'public officials' ". *Curtis Publishing Company vs. Cox*, 338 U.S. at 163-64, 87 S. Ct. at 1996 (concurring opinion of Warren, C.J.). The Court stated that in the *Time, Inc. vs. Hilt* case that they have no doubt that the opening of a new play lent to an actual instant was a matter of public interest which was entitled to constitutional protection. 385 U.S. at 388, 87 S. Ct. at 542. After citing many of these cases, this Court in *Rosenbloom* states, "thus, these cases underscore the vitality, as well as the scope, of the 'profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide open." Citing *New York Times*, 91 S. Ct. at 819. The Court states that if a matter is a subject of public or general interest it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not "voluntarily" choose to become involved. "To prevent this, would create apathy."

The present case illustrates the point. The community has a vital interest in the election for a candidate for Governor of Louisiana, and particularly what kind of individual the governor and the members of his immediate family (undisputedly his closest advisors and confidents) are.

The public has an interest of course in seeing that the criminal law is adequately enforced and in assuring that

the law is not used unconstitutionally to surpass free expression. *Rosenbloom* states: "whether the person involved is a famous large scale magazine distributor or a private business man running a corner newstand has no relevance in ascertaining whether the public has an interest in the issue." That they honor the commitment to robust debate on public issues, which is embodied in the First Amendment by extending Constitutional protection for all discussion and communication involving matters of public or general concern without regard to whether the persons involved are famous or anonymous. The question of what Constitutional standard of proof, if any, control the enforcement of state libel laws for defamatory falsehoods published or broadcast by news media about a persons activities not within the area of public or general interest was left unanswered.

"It is clear that there has emerged from the cases decided since *New York Times* the concept that the First Amendment's impact upon state libel laws derives not so much from whether the plaintiff is (a public official), (public figure) or (private individual) as it derives from the question whether the allegedly defamatory publication concerned a matter of public or general interest." The Court announced that the First Amendment applied to state libel actions where the utterance involved concerns an interest of public or general concern. Your petitioner submits that is the case here. The vital needs of freedom of the press and freedom of speech must persuade the Court that permitting criminal convictions on the basis of a judicial determination that an individual fails to use reasonable care would not provide adequate breathing space for these great freedoms, although it is certainly unclear from the record upon what the presiding judge based his reasons.

Rosenbloom held that the standard in a case such as the one before this Court was that a conviction could only be sustained upon clear and convicing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether it was false or not, beyond any reasonable doubt. It is crystal clear from the record in this case that this situation did not exist at all. There is no such clear and convincing proof beyond any reasonable doubt. The record actually shows that Moity had substantial and probably accurate sources which he had every reason to believe.

We respectfully submit that this Court has an obligation to test challenged judgments against the guarantees of the First and Fourteenth Amendments, and in doing so the Court cannot avoid making an independent Constitutional judgment on the facts of the case. *Rosenbloom vs. Metromedia, Inc. Ibid.*, 91 S. Ct. at 1825, citing other cases. We submit that the simple facts that this First Amendment question presented, of Constitutional fact, compels this Court's *de novo* review.

Rosenbloom at page 1826 then defines the standard of reckless conduct stating "there must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." This is simply not the case here. The defendant Moity relied on information supplied by reliable individuals who knew both Marion Edwards and Edwin Edwards for a long long period of time. Tr. 44, 45, 12, 13. There is no evidence in this record whataever to support a conclusion that Warren J. Moity "in fact entertained serious doubts as to the truth of these reports."

The continuing refusal of the Louisiana judiciary to

recognize the First Amendment prohibition that they ". . . shall make no law . . . abridging the freedom of speech, or of the press . . ." and the continuing use of the same statutory provision struck down in *Garrison*, underscores the importance of the constitutional problem and the need for further elaboration of the guiding principles by this Court.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Louisiana State Supreme Court.

Respectfully Submitted,

WILBUR D. ATKINS, JR.
305 West Main Street
Lafayette, Louisiana 70501
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing brief has been duly served upon Hon. Bertrand deBlanc, District Attorney, 15th Judicial District Court, Hon. Jack P. F. Gremillion, Attorney General, State of Louisiana, Hon. Harold A. Moise, Jr., Clerk, Supreme Court of the State of Louisiana, Clerk of Court, Parish of Acadia, Louisiana by mailing same to their official address.

Lafayette, Louisiana, this ..... day of ....., 1972.

W. D. ATKINS, JR.

APPENDIX A

SUPREME COURT OF LOUISIANA
New Orleans, 70112

STATE OF LOUISIANA December 21, 1971

V.

WARREN J. MOITY NO. 51,995

- - - - - -

In re: Warren J. Moity applying for writ of certiorari, mandamus and prohibition.

- - - - - -

Writ denied. There is no error of law under the only errors assigned by relator.

/s/ FWS
/s/ EHMcC
/s/ WBH
/s/ JWS
/s/ MEB
/s/ AT Jr.
/s/ JAD

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
December 21, 1971
/s/ Charles F. Seemann, Sr.
Deputy Clerk
[SEAL]

A TRUE COPY
Clerks' Office, New Orleans,
Feb. 11, 1972
/s/ Andrew J. Falcon
Dy Clerk Supreme Court of Louisiana
[SEAL]